

AMENDED IN SENATE JULY 1, 2008
AMENDED IN ASSEMBLY APRIL 22, 2008
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2002

Introduced by Assembly Member De Leon

February 15, 2008

An act to amend Sections 1775 and 1776 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 2002, as amended, De Leon. Public works: payments.

Existing law requires a contractor or subcontractor to submit, to the state or political subdivision on whose behalf a public work is being performed, a penalty of not more than \$50 per day, as provided and determined by the Labor Commissioner, for violations of these prevailing wage provisions.

This bill would increase the penalty to \$100 for each calendar day, plus interest ~~from the date of violation~~ *accruing at 10% per annum*, as provided and determined by the Labor Commissioner.

Existing law requires each contractor and subcontractor performing work on a public work to keep accurate payroll records regarding his or her employees that may be accessed by the public through the awarding body or state agencies and requires the contractor or subcontractor to produce certified copies of those records, as requested by the public, as provided, within 10 days subsequent to receipt of a written notice for those records. Existing law imposes, on the contractor or subcontractor, a penalty of \$25 for each calendar day of noncompliance but provides that a contractor is not subject to a penalty

assessment due to the failure of its subcontractor to comply with specified requirements.

This bill would increase the penalty to \$50 for each calendar day, plus interest from the date of violation.

This bill would also subject a contractor to a penalty assessment, as specified, only when a contractor had knowledge, or should have had knowledge of, its subcontractor's noncompliance.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1775 of the Labor Code is amended to
2 read:

3 1775. (a) (1) The contractor and any subcontractor under the
4 contractor shall, as a penalty to the state or political subdivision
5 on whose behalf the contract is made or awarded, forfeit not more
6 than one hundred dollars (\$100) for each calendar day, or portion
7 thereof, plus interest ~~from the date of violation~~ *accruing at 10*
8 *percent per annum from the date of the service of the assessment*
9 *to the date the assessment becomes final*, for each worker paid less
10 than the prevailing wage rates as determined by the director for
11 the work or craft in which the worker is employed for any public
12 work done under the contract by the contractor or, except as
13 provided in subdivision (b), by any subcontractor under the
14 contractor.

15 (2) (A) The amount of the penalty shall be determined by the
16 Labor Commissioner based on consideration of both of the
17 following:

18 (i) Whether the failure of the contractor or subcontractor to pay
19 the correct rate of per diem wages was a good faith mistake and,
20 if so, the error was promptly and voluntarily corrected when
21 brought to the attention of the contractor or subcontractor.

22 (ii) Whether the contractor or subcontractor has a prior record
23 of failing to meet its prevailing wage obligations.

24 (B) (i) The penalty may not be less than ten dollars (\$10) for
25 each calendar day, or portion thereof, for each worker paid less
26 than the prevailing wage rate, unless the failure of the contractor
27 or subcontractor to pay the correct rate of per diem wages was a
28 good faith mistake and, if so, the error was promptly and

1 voluntarily corrected when brought to the attention of the contractor
2 or subcontractor.

3 (ii) The penalty may not be less than twenty dollars (\$20) for
4 each calendar day, or portion thereof, for each worker paid less
5 than the prevailing wage rate, if the contractor or subcontractor
6 has been assessed penalties within the previous three years for
7 failing to meet its prevailing wage obligations on a separate
8 contract, unless those penalties were subsequently withdrawn or
9 overturned.

10 (iii) The penalty may not be less than thirty dollars (\$30) for
11 each calendar day, or portion thereof, for each worker paid less
12 than the prevailing wage rate, if the Labor Commissioner
13 determines that the violation was willful, as defined in subdivision
14 (c) of Section 1777.1.

15 (C) When the amount due under this section is collected from
16 the contractor or subcontractor, any outstanding wage claim under
17 Chapter 1 (commencing with Section 1720) of Part 7 of Division
18 2 against that contractor or subcontractor shall be satisfied before
19 applying that amount to the penalty imposed on that contractor or
20 subcontractor pursuant to this section.

21 (D) The determination of the Labor Commissioner as to the
22 amount of the penalty shall be reviewable only for abuse of
23 discretion.

24 (E) The difference between the prevailing wage rates and the
25 amount paid to each worker for each calendar day or portion thereof
26 for which each worker was paid less than the prevailing wage rate
27 shall be paid to each worker by the contractor or subcontractor,
28 and the body awarding the contract shall cause to be inserted in
29 the contract a stipulation that this section will be complied with.

30 (b) If a worker employed by a subcontractor on a public works
31 project is not paid the general prevailing rate of per diem wages
32 by the subcontractor, the prime contractor of the project is not
33 liable for any penalties under subdivision (a) unless the prime
34 contractor had knowledge of that failure of the subcontractor to
35 pay the specified prevailing rate of wages to those workers or
36 unless the prime contractor fails to comply with all of the following
37 requirements:

38 (1) The contract executed between the contractor and the
39 subcontractor for the performance of work on the public works

1 project shall include a copy of the provisions of Sections 1771,
2 1775, 1776, 1777.5, 1813, and 1815.

3 (2) The contractor shall monitor the payment of the specified
4 general prevailing rate of per diem wages by the subcontractor to
5 the employees, by periodic review of the certified payroll records
6 of the subcontractor.

7 (3) Upon becoming aware of the failure of the subcontractor to
8 pay his or her workers the specified prevailing rate of wages, the
9 contractor shall diligently take corrective action to halt or rectify
10 the failure, including, but not limited to, retaining sufficient funds
11 due the subcontractor for work performed on the public works
12 project.

13 (4) Prior to making final payment to the subcontractor for work
14 performed on the public works project, the contractor shall obtain
15 an affidavit signed under penalty of perjury from the subcontractor
16 that the subcontractor has paid the specified general prevailing
17 rate of per diem wages to his or her employees on the public works
18 project and any amounts due pursuant to Section 1813.

19 (c) The Division of Labor Standards Enforcement shall notify
20 the contractor on a public works project within 15 days of the
21 receipt by the Division of Labor Standards Enforcement of a
22 complaint of the failure of a subcontractor on that public works
23 project to pay workers the general prevailing rate of per diem
24 wages.

25 SEC. 2. Section 1776 of the Labor Code is amended to read:

26 1776. (a) Each contractor and subcontractor shall keep accurate
27 payroll records, showing the name, address, social security number,
28 work classification, straight time and overtime hours worked each
29 day and week, and the actual per diem wages paid to each
30 journeyman, apprentice, worker, or other employee employed by
31 him or her in connection with the public work. Each payroll record
32 shall contain or be verified by a written declaration that it is made
33 under penalty of perjury, stating both of the following:

34 (1) The information contained in the payroll record is true and
35 correct.

36 (2) The employer has complied with the requirements of
37 Sections 1771, 1811, and 1815 for any work performed by his or
38 her employees on the public works project.

39 (b) The payroll records enumerated under subdivision (a) shall
40 be certified and shall be available for inspection at all reasonable

1 hours at the principal office of the contractor on the following
2 basis:

3 (1) A certified copy of an employee's payroll record shall be
4 made available for inspection or furnished to the employee or his
5 or her authorized representative on request.

6 (2) A certified copy of all payroll records enumerated in
7 subdivision (a) shall be made available for inspection or furnished
8 upon request to a representative of the body awarding the contract,
9 the Division of Labor Standards Enforcement, and the Division
10 of Apprenticeship Standards of the Department of Industrial
11 Relations.

12 (3) A certified copy of all payroll records enumerated in
13 subdivision (a) shall be made available upon request by the public
14 for inspection or for copies thereof. However, a request by the
15 public shall be made through either the body awarding the contract,
16 the Division of Apprenticeship Standards, or the Division of Labor
17 Standards Enforcement. If the requested payroll records have not
18 been provided pursuant to paragraph (2), the requesting party shall,
19 prior to being provided the records, reimburse the costs of
20 preparation by the contractor, subcontractors, and the entity through
21 which the request was made. The public may not be given access
22 to the records at the principal office of the contractor.

23 (c) The certified payroll records shall be on forms provided by
24 the Division of Labor Standards Enforcement or shall contain the
25 same information as the forms provided by the division. The
26 payroll records may consist of printouts of payroll data that are
27 maintained as computer records, if the printouts contain the same
28 information as the forms provided by the division and the printouts
29 are verified in the manner specified in subdivision (a).

30 (d) A contractor or subcontractor shall file a certified copy of
31 the records enumerated in subdivision (a) with the entity that
32 requested the records within 10 days after receipt of a written
33 request.

34 (e) Any copy of records made available for inspection as copies
35 and furnished upon request to the public or any public agency by
36 the awarding body, the Division of Apprenticeship Standards, or
37 the Division of Labor Standards Enforcement shall be marked or
38 obliterated to prevent disclosure of an individual's name, address,
39 and social security number. The name and address of the contractor
40 awarded the contract or the subcontractor performing the contract

1 shall not be marked or obliterated. Any copy of records made
2 available for inspection by, or furnished to, a joint
3 labor-management committee established pursuant to the federal
4 Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a)
5 shall be marked or obliterated only to prevent disclosure of an
6 individual's name and social security number. A joint labor
7 management committee may maintain an action in a court of
8 competent jurisdiction against an employer who fails to comply
9 with Section 1774. The court may award restitution to an employee
10 for unpaid wages and may award the joint labor management
11 committee reasonable attorney's fees and costs incurred in
12 maintaining the action. An action under this subdivision may not
13 be based on the employer's misclassification of the craft of a
14 worker on its certified payroll records. Nothing in this subdivision
15 limits any other available remedies for a violation of this chapter.

16 (f) The contractor shall inform the body awarding the contract
17 of the location of the records enumerated under subdivision (a),
18 including the street address, city, and county, and shall, within five
19 working days, provide a notice of a change of location and address.

20 (g) The contractor or subcontractor has 10 days in which to
21 comply subsequent to receipt of a written notice requesting the
22 records enumerated in subdivision (a). In the event that the
23 contractor or subcontractor fails to comply within the 10-day
24 period, he or she shall, as a penalty to the state or political
25 subdivision on whose behalf the contract is made or awarded,
26 forfeit fifty dollars (\$50) for each calendar day, or portion thereof,
27 for each worker, plus interest from the date of violation, until strict
28 compliance is effectuated. Upon the request of the Division of
29 Apprenticeship Standards or the Division of Labor Standards
30 Enforcement, these penalties shall be withheld from progress
31 payments then due. A contractor is not subject to a penalty
32 assessment pursuant to this section due to the failure of a
33 subcontractor to comply with this section unless a contractor had
34 knowledge, or should have had knowledge, of the failure of a
35 subcontractor to comply with this section.

36 (h) The body awarding the contract shall cause to be inserted
37 in the contract stipulations to effectuate this section.

38 (i) The director shall adopt rules consistent with the California
39 Public Records Act (Chapter 3.5 (commencing with Section 6250)
40 of Division 7 of Title 1 of the Government Code) and the

1 Information Practices Act of 1977 (Title 1.8 (commencing with
2 Section 1798) of Part 4 of Division 3 of the Civil Code) governing
3 the release of these records, including the establishment of
4 reasonable fees to be charged for reproducing copies of records
5 required by this section.

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